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COUNTRY PAPER FOR MALAYSIA

BY

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1. CONTEXTUAL ISSUES

Issues: Some observers suggest that while better disclosure could not have prevented the events of 1997 and 1998, that better disclosure might have given policy makers and the markets sufficient warning to develop a response. This seems to be born out by recent policy initiatives designed to improve transparency in enterprise performance and governance practices. What has been the traditional view of disclosure and transparency more generally, and what role did disclosure play in the recent financial crisis? Has there been increasing acceptance and use of disclosure as a tool for enhancing governance and protecting investors? In Malaysia, for example, the stock exchange seems to have embraced the concept of DBR or disclosure based regulation. What have some of the broader trends been in the use of disclosure as a regulatory tool?

The Asian Financial Crisis

The Asian financial crisis was mainly a banking crisis, the underlying causes of which have been much explored¹, and which was dealt with by a mixture of micro and macro economic policies adopted by sovereign governments and by application of banking and insolvency laws of the various jurisdictions. By reason of those underlying causes, it is possible to say that disclosure could not by itself have averted the crisis. Having said that, on the other hand, disclosure is self-evidently a very important aspect of corporate governance in the sense that meaningful and adequate disclosure enhances good corporate governance. It has been observed that banking and insolvency laws intended to deal with crises cannot be expected to operate and produce positive results in an environment of weak or inadequate corporate governance.² In this way, it may be argued that good corporate governance, and thus by extension, adequate disclosure, are inevitably inter-linked to the array of legal and economic responses and prevention measure vis-à-vis such crises.

Developments in Malaysia

Malaysia has seen much in the way of moves to enhance disclosure both as a means of enhancing good corporate governance. Two main initiatives by policy makers stand out. These are the Finance Committee Report on Corporate Governance and the Securities Commission's disclosure based regulation programme. Another significant move though on a lesser scale is Bank Negara Malaysia's recent project to expand the scope of the central credit bureau to capture information on all loans granted by the banking sector, regardless of size, in a database intended to provide real-time information to banking institutions on total exposure of an applicant for banking facilities, and to assist in credit evaluation.³ Taken in tandem, these appear to suggest that it is indeed the case that policy makers consider increased disclosure as necessary to avert or at least anticipate any future crises, and to assist in responding to such crises.

¹ Asian Development Bank, *The Financial Crisis in Asia, Asian Development Outlook 1999*; Demigurgic-Kunt and Enrica Detragiache, *The Determinants of Banking Crises: Evidence from Developed and Developing Countries*, World Bank/IMF, May 1997

² R.W. Harmer, *Insolvency Law Reforms in the Asian and Pacific Region: Report of the Office of the General Counsel on TA 5795-REG: Insolvency Law Reforms* (Asian Development Bank, Manila, 2000).

³ Speech by Ali Abdul Kadir, Chairman of the Securities Commission, Malaysia entitled "*Corporate Governance in Malaysia: Beyond the Finance Committee Report*" given on 4 April 2000.

By way of developments⁴ since the last Corporate Governance Roundtable, various amendments to the Securities Commission Act 1993 and to the Companies Act 1965 are due to be tabled for consideration by Parliament. Many consequential amendments to the Kuala Lumpur Stock Exchange ('KLSE') Listing Requirements⁵ incorporating recommendations of the Finance Committee are also in the process of being finalised.⁶ By law, such amendments have to be approved by the Securities Commission⁷ before they can become effective and binding on companies admitted to the various official lists of the KLSE. The authorities have also embarked on a massive training exercise through compulsory education programmes for directors of listed and to be listed companies. Among the bodies that will conduct these programmes are the Research Institute of Investment Analysts Malaysia ('RIIAM') and the Malaysian Institute of Corporate Governance. The Securities Commission's *Guidelines on the Issue and Offer of Securities* were revised in December 1999 to mark the commencement of phase 2 of the 3 phase implementation programme in relation to the shift from merit based regulation to disclosure based regulation in Malaysia. There is considerable activity in the filed of accounting standards⁸, as will be apparent from the section of this paper devoted to that topic.

Attitudes to Disclosure

It is interesting to note that in the 1998 survey undertaken by KLSE/Pricewaterhouse⁹, 49% of investment/fund managers, equity research heads and institutional sales heads felt that had the level and extent of disclosure in the accounts of a listed company been unsatisfactory, they would not have invested in the company. 66% of all respondents to the survey indicated that level of disclosure in the accounts had the strongest degree of influence on them.

The policy initiatives undertaken by the authorities and the attitudes of the investment groups demonstrates the increased emphasis placed on disclosure and transparency.

Disclosure Based Regulation

The main development in terms of disclosure and transparency is naturally the shift in Malaysia from merit based regulation to disclosure based regulation. The published time frame for the shift envisages a full migration to disclosure based regulation by 2001 onwards. At present, there is a hybrid of merit based regulation and disclosure based regulation operating in tandem. In the Securities Commission's initiative, disclosure based regulation is seen as having three basic tenets, namely:

- Disclosure
- Due Diligence
- Corporate Governance

⁴ See *ibid.*

⁵ The KLSE has a 'Main Board Listing Requirements' and 'Second Board Listing Requirements'. These will be compendiously be referred to as 'Listing Requirements', unless the context requires specific identification of one or the other.

⁶ On 11 March 1999, the KLSE had already introduced various amendments to the Listing Requirements concerning quarterly reporting in the prescribed format by listed companies, in place of the previous half-yearly reporting. Listed companies were also required to file with the KLSE, for public release, annual audited accounts, auditor's reports and directors' reports within 4 months of the close of the financial year, as opposed to 6 months previously.

⁷ Pursuant to section 9 of the securities Industry Act 1983.

⁸ Inter alia, there was the promulgation of the Securities Industry (Compliance and Approved Accounting Standards) Regulations 1999 which came into force in July 1999.

⁹ See *infra*.

Publications by the Securities Commission indicate that the rationale for the move is to ensure that:

- access to the primary markets is accompanied by full, timely and accurate disclosure thus enabling investors to make informed and reasoned investment decisions.
- There is a continuous flow of timely and accurate information in secondary markets to ensure efficient market operation and fully informed investment decisions.

A critical aspect of the shift of paradigms is the role of due diligence, for which much in terms of regulatory developments have occurred. The other critical aspect is naturally enhanced corporate governance.

2. THE ROLE OF THE BOARD OF DIRECTORS

Disclosure and Boards

Issues: Did boards traditionally have the responsibility for overseeing disclosure in companies or was this responsibility primarily in the hands of the executive? Were there any instances of faulty communication due to governance structures e.g. lack of independence among those overseeing the disclosure process and conflicts of interest? Are perceptions changing with regards to the board's responsibility in this area? If so, what changes have been put into effect? In particular, have there been changes in the relationship between the board and external auditors? Have there been changes in the relationship of the board and the internal audit/compliance function?

Before examining the various issues that arise in connection with boards and disclosure, it may be useful to review the structure and composition of boards of Malaysian public listed companies ('PLCs').

Structure of Boards of Malaysian PLCs

The boards of Malaysian companies are unitary in nature. Malaysian companies are required by law to have a minimum of 2 directors. In practice, the average number of directors in Malaysian public listed companies is 8.¹⁰ The actual day to day management of many Malaysian public listed companies is largely in the hands of the executive and not the board of directors. By 'executive' is meant (collectively) a chief executive officer that often doubles as managing director, possibly one or more executive directors, and other salaried employees. A survey conducted of Malaysian public listed companies¹¹ found that 90% had at least 2 or more independent non-executive directors. Of that 90%, about half had 2 independent non-executive directors and a third had 3 independent non-executive directors. The KLSE Listing Requirements define 'independent directors' as directors who are:

- not officers of the company;
- neither related to officers of the company nor to family holdings of its shares;
- capable of representing the interest of the public shareholders; and
- free of any relationship that would interfere with the exercise of independent judgment.¹²

¹⁰ See the KLSE/Pricewaterhouse Survey.

¹¹ The KLSE/Pricewaterhouse Joint Survey of the Corporate Governance Practices in Public Listed Companies (1998) (hereinafter "the KLSE/PW Survey").

¹² Rule 9, Part 1, of the KLSE's Listing Requirements.

Therefore, a typical board of a listed company would consist of executive directors, non-executive nominee directors and independent directors. The Finance Committee on Corporate Governance, in its report on corporate governance, emphasised that boards must ensure that they review, annually, whether they have the required blend of skills and experience, and other qualities. With the move in Malaysia from a merit based regulation to a disclosure based regulation¹³, the role of the board of directors in ensuring compliance with all disclosure obligations acquires greater importance. As part of the move towards a disclosure based regime, the authorities in Malaysia have stressed and continue to stress the need to educate directors in this regard.¹⁴ The Malaysian Code on Corporate Governance was issued in March 2000 by the Securities Commission ('The Code'). It contains a requirement that 1/3 of the board must consist of independent directors, and that those directors must be capable of representing the interests of minority shareholders in the company.

The Disclosure Regime

Disclosure in the context of Malaysian listed companies can be broken down into two broad areas, namely primary market disclosure and continuous disclosure. Primary disclosure is at its most vital in connection with initial public offerings ('IPOs'). The disclosure obligations are contained in the Companies Act 1965 and the Securities Commission Act 1993. Each will be dealt with in brief.

Section 32 of the Securities Commission Act 1993 governs the following kinds of proposals:

- (1) Public offerings of securities whether with or without a listing on an approved exchange.
- (2) Issues of securities arising from:
 - Rights issues;
 - Bonus issues;
 - Special issues;
 - Private placements;
 - Employee share option schemes;
 - Schemes of compromise, arrangement, amalgamation and reconstruction, acquisitions of securities and assets, take-overs and mergers.
- (3) Issues of debt securities;
- (4) Issues of warrants, convertibles and call warrants.

The Securities Commission's *Policies and Guidelines on Issue/Offer of Securities*¹⁵ ('Guidelines') apply to all proposals submitted to the Commission. The Guidelines visit responsibility for compliance with disclosure obligations on all the directors. The same Guidelines also visit responsibility on advisers of the company (that is to say, public accountants, merchant banks, lawyers and others who provide advice to the company in connection with an application submitted to the Securities Commission) and promoters. Contents of prospectuses are also dealt with by Part 6 of the KLSE's Listing Requirements. It is an offence for any officer¹⁶ or financial adviser to submit or cause to be submitted any

¹³ See .

¹⁴ There is an on-going educational programme for company directors conducted not only by the Securities Commission but also by the Malaysian Institute for Corporate Governance and the Research Institute of Investment Analysts Malaysia. The Securities Commission has also released a booklet entitled "*Disclosure Based Regulation: What Directors Need to Know*" (1999).

¹⁵ 2nd Edition, 1997, updated and amended periodically.

¹⁶ Defined in section 32(1) of the Securities Commission Act 1965 to include directors and employees.

statement or information that is false or misleading, or in respect of which there is a material omission¹⁷ in a proposal submitted under section 32 of the Securities Commission Act 1993. The data relating to numbers of proposals received under section 32 and investigations launched under section 32B as at March 2000 are as follows¹⁸:

YEAR	TOTAL NO PROPOSALS APPROVED	NO. OF REPRIMANDS	NO. OF PROSECUTIONS UNDER SECTION 32/32B SCA
1993	160	3	-
1994	289	1	-
1995	284	1	-
1996	249	1	-
1997	267	2	- (1 investigation)
1998	145	3	- (4 investigations)
1999	N/A	1	2

Among the other statutory disclosure provisions is Part IV of the Companies Act 1965, which sets out legal prescriptions governing the contents of prospectuses pertaining to the issuance of new securities. Ultimately, the aim of primary disclosure is to enable potential investors to evaluate for themselves the risks of investing in the IPO based on the risk profile of the offeror.

Continuous disclosure and reporting obligations are imposed on PLCs by the KLSE's Listing Requirements. Briefly these can be described as follows:

- (a) PLCs are required to publish financial statements on a quarterly basis within two months after the end of each financial quarter.
- (b) PLCs are required to furnish annual audited accounts, auditor's and directors' reports within 4 months from the end of the financial year.
- (c) PLCs are required to state the extent to which they have complied with the Malaysian Code on Corporate Governance.
- (d) PLCs are required to make immediate public disclosure of all material information (irrespective of whether of a financial nature or not) concerning its affairs, and in particular concerning the following:

¹⁷ Section 32B(1).

¹⁸ The table that ensues was extracted from a preliminary draft of a paper prepared for the OECD Development Centre by R. Thillainathan, Rabindra S. Nathan and Shanti Kandiah entitled *Malaysia: Corporate Governance Country Assessment* (2000), and the authors' indebtedness is extended to Ms. Shanti Kandiah who collated the data from the Securities Commission's Annual reports for 1994 to 1998 and from other sources.

Overseeing Disclosure

Responsibility for compliance with disclosure provisions within the board inter se depends on the provision in question. Generally, boards of Malaysian companies do not meet often enough, whether as a full board or at committee level, for the board to be able to discharge, practically speaking, the continuing disclosure and other reporting obligations. There is also the question of access to information. Therefore in practical terms, these obligations are largely left to the executive. On the other hand, primary disclosure leaves very little room for the entire board to avoid taking some kind of responsibility. It is interesting to note that only 11% of respondents to the KLSE/Pricewaterhouse survey managed to identify that the entire board is responsible for ensuring that adequate internal controls; 51% thought that was the role of the Managing Director/Chief Executive Officer.

The legislative provisions governing primary disclosure seem to visit responsibility not only on the company but also on the directors and others. However, the way the provisions are couched enables an individual director to argue that he personally did not submit or cause to be submitted the misleading statement or information in question. Also, where a proposal has yet to be fully implemented, and the information therein may be misleading or incomplete, any 'person' (which would include any director) who becomes aware of that fact comes under a duty to advise the Commission. It is a defence for a director, in connection with responsibility for misleading or incomplete statements or information to prove, that he had reasonable grounds to believe that the statement or information was true and not misleading.

On the other hand continuous disclosure and reporting provisions contained in the listing requirements are primarily the responsibility of the listed company, with attendant consequences for non-compliance under Part 12 of the Listing Requirements. However, a 1998 amendment to the Securities Industries Act 1983 enables the KLSE and the Securities Commission¹⁹ *inter alia* to take action against:

- the company ;
- any director or officer of the company; and
- any person to whom the listing requirements are directed,

for failure to comply with, observe, enforce or give effect to the KLSE's Listing Requirement. Therefore non-executive directors have to be mindful of this provision.

Enforcement Statistics Relating to Disclosure

Disclosure still remains a problem in Malaysia. In 1999, the KLSE reprimanded 37 listed companies for not complying with the disclosure obligations (as opposed to other obligations) in the Listing Requirements.²⁰ Thus far, in the year 2000, up to 6 May 2000, there have been 9 reprimands issued.²¹ Details of the listed companies concerned, and the nature of the underlying non-compliance for 1999 and 2000 are set out in Appendix I hereto. There is no

¹⁹ The seemingly concurrent jurisdiction requires some clarification. Sections 11(1) to 11(7) provide that the KLSE can of its own accord, initiate such action by triggering the relevant procedures specified in the listing requirements for dealing with such breaches. Once a decision is made and action is taken, the defaulter can appeal to the Securities Commission within 14 days, otherwise the decision of the KLSE is final. On appeal the Securities Commission can affirm, set aside, or vary the action taken by the KLSE and its decision is final. Having said that, under section 11(8), the Securities Commission can itself directly initiate action against the 'defaulter', and if it does so, the KLSE is precluded from initiating any action.

²⁰ KLSE Press releases

²¹ Ibid.

empirical evidence available as to what steps if any, the non-executive and independent directors took in relation to the compliance, by the listed companies in question, with its disclosure obligations.

Case Study

Renong Berhad & United Engineers (M) Berhad

A recent and notorious example of failure to comply with ongoing disclosure obligations was the case of the Renong/United Engineers.²² Renong Berhad ('Renong') and United Engineers (M) Berhad ('UEM') are listed companies. In November 1997, UEM announced that it had acquired a 32.6% stake in Renong.²³ The purchase was not accompanied by the obligatory disclosures under the listing requirements and under the Companies Act 1965 concerning changes in substantial shareholdings. There was no disclosure as to who the shares were acquired from. No approval was sought by UEM from its shareholders prior to the acquisition despite the fact that the acquisition of the shares, when viewed in toto, was a substantial enough transaction to warrant shareholder approval.²⁴ There was also inconsistency in the announcements made by UEM to the KLSE. After the KLSE received UEM's announcement on 17 November 1997 that it had acquired 722.9 million shares in Renong, the KLSE queried UEM about the date of the purchases. UEM replied on 21 November 1997 that it had acquired the said 722.9 shares on 17 November 1997. However, on 23 January 1998, UEM announced that the 722.9 shares had in fact been acquired over a period of time up to 17 November 1997. Whilst Part 10 of the KLSE's Listing Requirements emphasises timing of announcements, it also stresses content, and in this regard, Rule 341 of the Listing Requirements requires announcements to be 'factual, clear and succinct'. It may be argued that in light of the aforementioned events, the original announcement by UEM did not conform to Rule 341.

UEM was fined by the Registrar of Companies for breach of section 69(e) of the Companies Act 1965 in failing to give notice of a change in a substantial shareholder's interests. The default penalty prescribed by the Companies Act at the time was RM500 (approximately USD131.50). It has since been increased in 1998 to RM50,000 (approximately USD 13,158). UEM was also fined RM100,000 (approximately USD26,316) by the KLSE for breach of the disclosure provisions under the Listing Requirements. The disclosure aspect of this case was only one of the issues thrown up by this controversial transaction. There were other issues, not directly relevant to the topic of this paper, relating to the transaction. Among them was the granting of a controversial waiver to UEM from having to undertake a mandatory general offer for the remaining shares in Renong not held by it or persons deemed to be acting in concert with it.²⁵ Another issue was Renong's ability to vote at the Extraordinary General Meeting of UEM that was convened, belatedly after the acquisition had been performed and all consideration had been paid. Renong was UEM's controlling shareholder at the time. Rule 118(2) of the KLSE's Listing Requirements provided that the KLSE could require the interested substantial shareholder not to vote.

²² The account of the Renong/UEM transactions that appears hereafter was extracted from the OECD Development Centre paper by R. Thillainathan, Rabindra S. Nathan and Shanti Kandiah entitled *Malaysia: Corporate Governance Country Assessment* (2000). The authors' are indebted to Ms. Shanti Kandiah who collated the underlying facts relating to the transaction.

²³ To put matters in perspective, the total cost of the acquisition was RM2.34 billion (approximately USD616 million) which amounted to 86.6% of UEM's shareholders' funds at the material time. UEM's share price fell 48% in the week following the announcement, indicating negative market reaction to the announcement. The Malaysian stock market fell by only 6.8% over the same period, thereby highlighting the extent of the negative perception.

²⁴ Under section 132C of the Companies Act 1965.

²⁵ Under the Malaysian Code on Take-overs and Mergers 1987 (now since replaced by the 1998 Code that came into effect on 1.1.99).

There is no publicly available indication as to the views of the independent directors on UEM's board of directors at the material time or as to the steps taken by them to enjoin compliance with the disclosure obligations to which UEM was subject.

Finance Committee Recommendations

In its report, the Finance Committee on Corporate Governance sought to buttress the role of the board in the context of disclosure. The Report recognised that there has to be a balance between principle that the market should be provided with adequate information to avoid the creation of a false market, and the fact disclosure must be able to be deferred to prevent loss of a genuine corporate opportunity.²⁶ The recommendations were aimed at strengthening the internal processes within the company, and in particular, the role of the board. The absence of statutory provisions expressly requiring, as a matter of law, the presence of a system of formal control over the company's process of financial management and accounting was noted. It was felt²⁷ internal control systems were necessary to ensure adequate and accurate accounting records were maintained by the company at all times to enable the company to discharge the primary and on-going disclosure obligations. The Finance Committee recommended that the directors' take a more robust approach to internal risk management and control, and install an adequate system of internal controls. The Committee felt that the Listing Requirements should be amended to provide for a statement by directors as to the adequacy and effectiveness of the company's system of internal controls.²⁸ The external auditor would be required to review the directors' statement and to bring up the results of the review with the directors.²⁹ This was felt to be more effective than a review that entailed going public with the results. The Committee also recommended that every company should identify a person within the company set-up who would be primarily responsible for ensuring on-going disclosure.³⁰ These calls for changes indicate that there are changes to the perception as to the responsibility of the board for both primary and ongoing disclosure.

In another reform move, the auditor is also to be made to comment on the consistency between the audited accounts and the information contained in the directors' report.³¹ There are also recommendations to the effect that auditors' agreement is required vis-à-vis the content of preliminary announcements of financial results.³² A further reform is for the external auditors' duty to report breaches of the Companies Act to be extended to include reporting breaches of securities' laws and listing requirements, thus enhancing the 'watchdog' function of an external auditor over management, as well as to report fraud and dishonesty.³³

Many of the recommendations have found their way into the Code. Other recommendations require changes to various laws.

²⁶ Finance Committee Report, Chapter 6, page 143.

²⁷ Echoing the *Cadbury Committee Report* and the *Hampel Report*.

²⁸ *Ibid*, page 149.

²⁹ *Ibid*.

³⁰ *Ibid*, page 151-152. It was felt that visiting the company with this obligation in every case would be problematic in view of the fact that many PLCs had external secretaries and external secretaries were not proximate enough to maintain the kind of supervision and exercise the kind of responsibility required.

³¹ *Ibid*, page 30.

³² *Ibid*, page 216.

³³ *Ibid*, page 220-221.

Audit Committees

Issues: What was the prevalence of audit committees prior to the financial crisis? What are recent developments in the introduction of audit committees in Asian countries? What have been some of the results/problems associated with their introduction? Have there been any benefits to date? What measures are being introduced to increase the effectiveness of audit committees, e.g. rules to increase independence? Are there alternatives to audit committees that are being contemplated? To what extent have voluntary and mandatory approaches been used? Can one draw conclusions regarding voluntary versus mandatory approaches?

Audit committees, which developed in the United States and spread to Canada, the United Kingdom and Australia, were a feature of PLCs in Malaysia even prior to the Asian financial crisis in 1997.

The KLSE's Listing Requirements were amended in 1993³⁴ to include provisions relating to, inter alia, audit committees. The position under the Listing Requirements now is that companies seeking admission to the Official List must establish an Audit Committee comprising a majority of directors independent of management and free from any relationship that, in the opinion of its Board of Directors, would interfere with the exercise of independent judgment as a committee member.³⁵ Companies with ordinary shares listed on the Exchange, as a condition of listing and continued listing of their securities on the Exchange, shall have an audit committee.³⁶

The Listing Requirements go on to provide³⁷ that an audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of not fewer than 3 members of whom a majority shall not be –

- Executive directors of the company of any related corporation:
- a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or
- any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.³⁸ The Listing Requirements further provide³⁹ that the functions of an audit committee shall be –

- to review –
 - (i) with the auditor, the audit plan;
 - (ii) with the auditor, his evaluation of the system of internal accounting controls;
 - (iii) with the auditor, his audit report;
 - (iv) the assistance given by the company's officers to the auditor;
 - (v) the scope and results of internal audit procedures; and

³⁴ Amendment List 1/93 with effect from 1.8.93

³⁵ Rule 15A of the KLSE Listing Requirements.

³⁶ Ibid.

³⁷ Rule 344A(2).

³⁸ Rule 344A(3)

³⁹ Rule 344A(5)

- (vi) the balance sheet and profit and loss account of the company and, if it is a holding company, the consolidated balance-sheet and profit and loss account, submitted to it by the company or the holding company, and thereafter to submit them to the directors of the company of the holding company;
 - (vii) any related party transactions that may arise within the company or group; and
- to nominate a person or persons as auditors

The current position is that PLCs are required to report on the composition and terms of reference of their respective audit committees in their annual reports. This was one of the recommendations of the Finance Committee in its Report of Corporate Governance. However, the extent of reporting in the annual report differs from company to company. For example, in its 1999 Annual Report, British American Tobacco Berhad set out the composition and terms of reference of its audit committee and information on the minimum frequency of meetings but no additional information was given on the actual number of meetings and what actually transpired. A random perusal of Annual Reports for some other listed companies (Diethelm Holdings (Malaysia) Berhad, Selangor Properties Berhad, Chocolate Products (Malaysia) Berhad, Paragon Union Berhad, and Olympia Industries Berhad) indicated the same level of treatment. On the other hand, in its 1999 Annual Report, besides giving the terms of reference and composition of the audit committee, Guthrie Ropel Berhad set out information concerning the number of meetings held up to 31.12.99 and a summary of what the committee did, which was helpful.

There is no empirical evidence on whether audit committees are effective in enhancing corporate governance in Malaysian PLCs. There is at least one example of how the external auditors of a company highlighted a serious financial situation to the audit committee.

Case Study

The Case of Sime Bank Bhd

Sime Bank Berhad is a nonlisted public company was until June 1999 a subsidiary of Sime Darby Berhad, a listed Malaysian conglomerate. Sime Securities Sdn Bhd was a subsidiary of Sime Bank. Sime Securities carried on the business of a licensed stock broking company.⁴⁰ On 4th September 1997, the Audit Committee of Sime Bank⁴¹ was informed by its then Chief Executive Officer, Dato' Ismail bin Zakaria ("DIZ") that a client of Sime Securities was exposed to an unrealised loss of approximately RM250 million. Sime Securities had purchased shares for that client for approximately RM500 million, and those shares had fallen in value by half, hence the exposure of RM250 million.⁴² Sime Bank's auditors were of the view that if nothing was done, then, given that Sime Securities' shareholders' funds stood at RM200 million, Sime Securities would be technically insolvent. DIZ proposed that Sime Bank grant a loan to the client to enable it to settle the losses at the Sime Securities. The audit committee accepted the CEO's proposal and itself recommended the loan to the board of Sime Bank, which was scheduled to meet later that morning. The CEO

⁴⁰ Sime Securities holds a Dealer's Licence under the Securities Industry Act 1983.

⁴¹ The audit committee comprised two independent directors and one director representing Sime Darby.

⁴² The shares purchased had been placed in a warehousing account in Sime Securities, thereby effectively concealing it from management of the Bank, until the drastic fall in the markets made disclosure of the existence of these shares inevitable.

briefed the board, which also accepted the proposal. The Sime Bank board resolved in principle to grant the loan, of an amount to be determined after consulting management of Sime Securities. It was also resolved that the precise method of settling the losses by the loan was to be resolved by the Sime Securities management in conjunction with the CEO and the Executive Director of Sime Bank. A meeting of the board of Sime Securities was held later that same day, and many directors were common to both boards. The board of Sime Securities resolved to use the loan to be provided by the parent bank to settle the outstanding losses of the client in its books. The intention of the board of Sime Bank seemed clear, namely that an unsecured potential liability of its subsidiary would be transferred to the parent in the form of a fully collateralised loan. Unfortunately, the loss was not settled in the manner intended by the board. DIZ was subsequently prosecuted by Bank Negara Malaysia under section 65 of the Banking and Financial Institutions Act 1989 for allegedly failing to comply with the conditions imposed by the Board of Sime Bank Berhad.

The trial is pending.

Finance Committee's Recommendations on Audit Committees

The Finance Committee on Corporate Governance reacted to a general perception that audit committees in Malaysian listed companies were ineffectual. In its report⁴³, it recommended that the existing listing requirements should be clarified to require inter alia that⁴⁴:

- the chairman of the audit committee should be independent;
- the finance director and head of internal audit should be required to attend meetings of the audit committee;
- at least once a year, the audit committee should meet with the external auditors without the executive being present.

The Finance Committee Report on Corporate Governance sought to improve on the existing provisions concerning audit committees. The Finance Committee recommended that audit committees undergo formal training on the following matters⁴⁵:

- The requirements of the Malaysian Code on Corporate Governance.
- The importance of their independence.
- Continual updates on accounting and financial matters.

3. ACCOUNTING STANDARDS SETTING AND THE IMPLEMENTATION OF STANDARDS

Issues: What was the state of accounting standards before the Asian crisis? How have standards been developed and implemented? Did accounting standards have any impact on the way the crisis unfolded? What specific types of information appeared to be lacking or were poorly reported?

⁴³ Op cit at page 29.

⁴⁴ Presumably 'independent' within the meaning of Rule 9 of the Listing Requirements.

⁴⁵ Ibid, page 36.

What has been done at the policy level in response to problems? What has been done by the accounting profession and companies? What have some of the problems been in implementing improve standards? How well have changes addressed the underlying problems? Are there still gaps in accounting standards ant their implementation that need to be filled?

What is the relationship between national standards and international standards? How can the quality of standards be improved and maintained? What are the respective roles of the public and private sectors?

Malaysia has been adopting, starting from the late 70's, accounting standards that are generally consistent with the standards issued by the International Accounting Standards Committee, IASC (dubbed IAS's). This process had been spearheaded and supervised by the Malaysian Institute of Accountants (MIA) and the Malaysian Association of Certified Public Accountants (MACPA), the two professional accountancy bodies in the country. At that time, the MIA which was established under the Accountants Act 1967 had the authority empowered by law to manifest itself as the authoritative body regulating the accounting profession.

Malaysia has not only been adopting good standards but has also been trying to strengthen actual accounting and auditing practices. The professional accounting bodies in the country review the published financial statements annually on a random basis to ensure compliance by their members with the accounting standards and statutory disclosure requirements. Schedule II sets out the IASs which are adopted for application in Malaysia. As evident from the schedule, some of the revised standards have not been adopted yet. Insofar as the 'old' standards are concerned, Malaysia has adopted them for application.

On 30 June 1997, the Financial Reporting Foundation (FRF) and the Malaysian Accounting Standards Board (MASB) were set up. The FRF, together with the MASB, represented the new framework for financial reporting in Malaysia. This new framework, enacted under the Financial *Reporting Act 1997, comprises an independent standard-setting structure with representation from all parties in the standard-setting process, including preparers, users, regulators and the accounting profession. The functions of MASB include:

- the issuance of new standards as approved accounting standards
- the review, revision or adoption as approved accounting standards existing accounting standards.

The Securities Commission has since 1998 set up a Financial Reporting Surveillance & Compliance Department whose objective is to ensure that public listed companies comply with approved standards of financial reporting and accounts in a disclosure-based environment. The monitoring of reporting and compliance with approved standards and regulatory bodies' requirements by the financial institutions is done by the central bank, Bank Negara, whilst monitoring of the unlisted companies is conducted by the Registrar of Companies.

As a transitional arrangement towards the establishment of a new financial reporting regime under the Financial Reporting Act 1997, the MASB decided in January 1998 to adopt 24 of the extant accounting standards as approved accounting standards for the purposes of the Financial Reporting Act. The remaining eight accounting standards which had been issued by MIA and MACPA, which had not been adopted by MASB, continued to be promulgated by MIA and MACPA as applicable standards in the preparation of financial statements until each of those accounting standards had been reviewed and adopted as approved accounting standard, or relevant new accounting standards were issued (Please refer to Schedule III). MASB meanwhile embarked on a programme to review all extant accounting standards for consistency with the latest developments in International Accounting Standards, statutory and

regulatory reporting requirements, as well as to evaluate the practical aspects relating to the application of the accounting standards.

As at April 2000, MASB has issued 13 accounting standards as MASB standards. Of the 13 standards issued, the following were noted :

- a) 6 of the standards are consistent in all material aspects with the IASs;
- b) 2 of the standards, whilst consistent in all material aspects with the IASs, gave exemption to exempt enterprises from complying with certain of the provisions specified in the standards;
- c) 5 of the standards are consistent in all material aspects with the IASs but with certain exceptions to them.

Schedule IV set out the 13 standards which have been issued by MASB as MASB standards and their compliance with the IASs.

As at April 2000 also, MASB has issued 2 forewords and 2 technical releases. In addition, MASB published 12 exposure drafts, 5 draft statements of principle and 1 discussion paper for public comment. Schedule V sets out the MASB pronouncements which form the framework for financial reporting whilst Schedule VI sets out the MASB pronouncements issued for public comment.

4. AUDIT STANDARDS AND THEIR IMPLEMENTATION

Issues: What kinds of audit standards exist and how are they applied? What rules exist to ensure the independence of the auditor and the application the auditor's ethical conduct? How do these rules work in practice? What kinds of improvements are being made both in standards and in their implementation? To what extent are international standards of audit relevance and value in the Asian region? What has been the approach to regulating the profession? Have changes been introduced, why and to what effect? What should the role of the public sector be in encouraging high quality audit, and what is the role of the profession?

Regulation of Auditors

The Malaysian Companies Act requires the accounts of all companies to be audited. It is spelt out in the Act that the auditor shall, in a report, state whether the accounts are prepared so as to give a true and fair view of the matters required to be disclosed in the accounts as laid out in Section 169 of the Act. They have to further state whether there are any defect or irregularity in the accounts and if he is not satisfied as to any matter.

Sections 8 and 9 of the Act sets out the qualification of the person to act as auditor. The following persons are disqualified to act as auditors of a company:

1. a person who is not an approved company auditor: approved company auditor being a person approved by the Ministry of Finance;
2. a person who is indebted to the company for a sum exceeding RM2,500;
3. a person who is an officer of the company, a partner, employee or employee of an officer of the company or a shareholder or his spouse is a shareholder of a corporation whose employee is an officer of the company; or
4. a person who is responsible for or if he is the partner, employee or employee of a person responsible for the keeping of the register of members or the register of holders of debentures of the company.

It is the duty of the auditor to form an opinion as to whether he has obtained all information and explanations that he required and whether proper accounting and other records are kept.

Subsection 174(8) of the act places a statutory duty on an auditor to report in writing to the Registrar of Companies, where in the course of performance of his duties as an auditor of a company he is satisfied that:-

- there has been a breach or non-observance of any of the provisions of the Act;
- the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or by bringing the matter to the directors of the company or if the company is a subsidiary, of the directors of the holding company.

Role of Malaysian Accounting Bodies

The Malaysian Institute of Accountants (MIA) is established under the Accountants Act 1967 as the authoritative body registering and regulating the accounting profession. The MIA Council has determined that approved Auditing Standards for its members comprise:

- International Standards on Auditing (ISA)
- Malaysian Standards on Auditing (MSA)

In addition, all other statements issued by MIA relating to recommended practices, including guidelines on auditing are to be regarded as opinions on best current practice and thus form part of generally accepted auditing principles (GAAP).

Members of MIA are expected to comply with the standards on auditing. The MIA Council may inquire into apparent failures by members to observe approved Auditing Standards and GAAPs or to disclose departures therefrom. Apparent failure to do so may result in an investigation into the member's conduct and might lead to disciplinary action being taken against the members concerned.

In addition to the MIA, the Malaysian Association of Certified Public Accountants (the MACPA) is a body set up in 1958, with its main objectives of advancing the theory and practice of accountancy in all its aspects, to recruit, educate, train and assess by means of examination or otherwise a body of members skilled in these areas, to preserve the professional independence of accountants and to maintain high standards of practice and professional conduct by all its members.

The MACPA has adopted ISA's as early as 1982 when they were referred to as International Auditing Guidelines (IAGs) and to-date has adopted 24 ISA's

International Standards of Auditing

The MIA and MACPA are members of the International Federation of Accountants (IFAC) which has established the International Auditing Practices Committee (IAPC) to develop and issue standards and statements on auditing. The ISAs adopted by MIA and MACPA are listed in Appendix VII.

Malaysian Standards on Auditing

MSAs are issued by MIA and MACPA as a part of efforts to define standards of auditing and harmonize auditing practices in Malaysia. They are to augment ISA's approved by the MIA and MACPA and intended to cover topics not dealt with in an ISA or where particular features of Malaysian environment warrant a domestic standard written specifically to address those features. These are to be regarded as opinions on the best current practice and thus form part of generally accepted auditing standards. These are listed in Appendix VIII.

The Malaysian Auditing Environment

Generally, the Malaysian environment has a sufficiently structured auditing framework with the regulations laid down by the Companies Act together with the Auditing Guidelines adopted by the accounting profession. The author is of the opinion that generally, these standards are adhered to by the firms of auditors, especially the medium to larger firms and especially for publicly listed companies where accounting statements are under the scrutiny of a host of analysts from bankers to investors.

Nevertheless, the areas in which the auditing environment could be improved may include the following:

- Auditors have to work closely with management who prepared the financial statements that they are auditing. Like any other business, the audit firm will besides having an obligation to shareholders, to whom they are reporting, wish to retain the audit assignment. The dependency may give rise to a need to compromise especially if the audit fee involved is substantial to the firm. This may be alleviated by rotation of auditors.
- The audit fee structure is not fixed and may thus be subject to "undercutting" and lead to sub-standard audits.
- In addition to auditing, a firm may provide other non-audit services to an auditee company. Firms may bid for audits by quoting low fees and then "recover" the cost from other services. The current requirement to disclose audit fees only should be widened to disclose all fees and emoluments paid to the audit firm as well as to its related service providers.
- To the extent that MASB accounting standards are to be complied as a statutory requirement, approved auditing guidelines should be awarded the same status such that audit firms may be prosecuted for failure to comply with these guidelines.

Since the East Asian economic crisis in 1997/1998, much focus has been given to the state of corporate governance in the country. The High Level Finance Committee on Corporate Governance's report on Corporate Governance has in addition to other areas, made the following recommendations to improve the audit reporting and environment in its report dated February 1999:

1. that the basic statutory duty of auditors should be extended to include reporting on whether the directors' report is consistent with the accounts
2. that the listing rules of Exchanges should require the auditors' agreement of the content of preliminary announcements of financial results consistent with the aim of ensuring the integrity and credibility of publicly reported information
3. that the relevant section of the Companies Act should be amended to disclose fees paid to audit firms for non-audit work.
4. that a periodic change of audit partners should be arranged to bring a fresh approach to the audit. The Committee recommends that the relevant professional body should develop guidelines to this effect.

5. that the relevant section of the Companies Act be amended to enable auditors to report matters that in his professional opinion constitute breach of the Act.
6. that auditors in Malaysia should be placed under an obligation to report fraud, dishonesty and other serious breaches to the relevant authority. The provision should additionally protect auditors from defamation suits in respect of this reporting obligation. Additionally, the relevant professional bodies should develop guidelines in consultation with the relevant regulators to provide guidance to their members as to the scope of the duty.
7. the relevant professional organizations should arrive at a standard benchmark fee increase upon consultation with all relevant parties in view of the increased responsibility in respect of compliance.
8. that the relevant section of the Companies Act should be amended to require the company to forward a copy of the written representations of the auditor, or alternatively to allow the auditor to make representations to the Registrar of circumstances surrounding his removal.
9. that a similar provision to this effect should also be inserted in the Listing rules of Exchanges to require all removals of auditors and reasons for the removal, as well as representations by the auditor to be made to the Exchange.
10. that in the case of resignations and declinations to stand for re-election by auditors, a provision should be inserted in the rules of the Exchanges requiring companies to circulate to the shareholders, the auditors' representations in respect of his reasons for resignation or declination to stand for re-election.
11. the notification requirement should be extended to embrace failure to re-elect or declinations to stand for re-election by auditors.

Compliance Enforcement

The Securities Commission has since 1998 set up a Financial Reporting Surveillance & Compliance Department whose objective is to ensure that public listed companies comply with approved standards of financial reporting and accounts in a disclosure-based environment. Prior to this, the role of accounting statements review was carried out by the accounting bodies who, on a random basis, select published financial statements of companies for review.

The Councils of both the MACPA and MIA may inquire into apparent failures by members and those persons under their supervision to observe approved standards on auditing and generally accepted auditing principles. Any failure to observe approved standards on auditing may lead to disciplinary action being taken against the member or members concerned.

5. GOVERNANCE DISCLOSURE AND NON-FINANCIAL DISCLOSURE

Issues: To what extent are disclosures made regarding capital structures, major ownership of companies and voting rights? To what extent is information on boards provided, in particular, data on directors, and key executives and their remuneration? Do companies disclose sufficient information on related parties, related party transactions and risks? There may be further areas that require consideration such as disclosure of take-over defences and mergers, company environmental and ethical policies or policies regarding stakeholders? Where might there be additional gaps in reporting? What can be said about methods of filing and reporting information, i.e. is there increasing use of new technologies to improve the reporting process? Are there any particular regulatory concerns that need to be addressed?

Disclosure of the following matters is routinely captured in a typical annual report of a listed company in Malaysia covering the financial year:

- Substantial shareholders (i.e. those who hold more than 2% of the issued capital)
- Twenty largest shareholders ranked in descending order
- Analysis of shareholding spread
- All subsidiary companies
- Identity of holding company
- Significant related party transactions
- Interests of directors (direct/indirect) in the company, holding company and subsidiaries

Capital Structures

The Listing Requirements require disclosure at primary market level of capital structures⁴⁶. Disclosure of persons who 'control' the company are required under Rule 195 to be stated in prospectuses. As a matter of continuous disclosure, immediate announcements are required to be made by a listed company in relation to changes of substantial shareholders.⁴⁷ Under the KLSE's Corporate Disclosure Policy, for example, changes in control require immediate announcements.⁴⁸ The Companies Act 1965 also regulates the need for disclosure of changes in substantial shareholdings.⁴⁹ Routine information on shareholders and extent of shareholdings can be obtained from the Malaysian Central Depository which oversees the central depositories scripless share system. Other information such as issued and paid up capital are required to be filed with the Registrar of Companies.

⁴⁶ For example, Rule 18(2) for listing applications and Rule 196 for prospectuses.

⁴⁷ Rule 32.

⁴⁸ Inter alia under Rule 335.

⁴⁹ Under section 69E.

Voting Rights

Malaysia practices a one share one vote system. Particulars of voting rights are required to be disclosed in prospectuses in primary market transactions.⁵⁰ Rights issues also require disclosure of the voting and other rights attached to shares.⁵¹ Articles of association are required to disclose the rights attached to shares other than ordinary shares.⁵² There are other miscellaneous provisions dealing with, inter alia, voting rights of unit trust holders.⁵³

Boards, Directors and Directors' Remuneration

Information on boards is available at the Registrar of Companies, as well as under the Listing Requirements. In primary market disclosure, information on directors, their direct and indirect interests are required to be disclosed. As a matter of continuing disclosure, immediate announcements are required of changes in management⁵⁴, i.e. directors and secretaries. As mentioned earlier, the composition of the audit committee has to be made known, and any changes have to be the subject of immediate disclosure. Directors' remuneration is required to be disclosed in the annual audited accounts. The main drawback is that the remuneration is presented as a lump sum and not broken down. If emoluments of directors of an offeror company are to be varied if a take-over offer is accepted there has to be a notice to that effect, and a notice to the converse effect as well.⁵⁵ Under the Finance Committee recommendations, remuneration of each director would have to be stated.⁵⁶ It was also recommended that there be transparent and formal procedures for determining executive remuneration.

Related Party Transactions

Disclosure of related party transactions is provided for in the Listing Requirements, particularly in Rules 118 and 119. Most companies make disclosure of their related party transactions also in the Annual Reports. However, as seen in the case of Renong & UEM, there are lapses in this regard.

Take-over Defences

The Listing Requirements only require the offeree company to disclose rights to acquire equity held by directors of the offeree company.⁵⁷ Under Malaysian law, the Malaysian Code on Take-overs & Mergers specifically prohibits frustration of offers by the board of the offeree company, including by means of:

- Issues of shares;
- Issues or granting of options over unissued shares;
- Sales or disposals of assets of the offeree company of a material amount.⁵⁸

⁵⁰ For example, see Rule 176 of the Listing Requirements.

⁵¹ Rule 257.

⁵² Rule 283.

⁵³ Rule 381.

⁵⁴ Rule 30 of the Listing Requirements.

⁵⁵ Rule 154.

⁵⁶ Finance Committee Report, page 67.

⁵⁷ Rule 159.

⁵⁸ Section 35(1) of the Code.

Improvements to Disclosure

Presently, there are no provisions requiring mandatory disclosure of environmental policies or ethical policies and about the position of stakeholders.

Technology and Disclosure

Announcements by listed companies makes good use of improvements in technology but for the KLSE, access is restricted to subscribers to their system,, when it should be completely online and open. However, the biggest improvement is required at the Companies Registry, where retrieval of information is cumbersome and outdated.⁵⁹

⁵⁹ Although the system is computerised, the records are in many cases not up to date, and there is a time lag between filing of information by companies and the input of the data relating to those changes into the computerised system for use by the public.

APPENDIX I

Disclosure Obligations: KLSE Public Reprimands 1999-2000

Legend:

MBLR: Main Board Listing Requirements

SBLR: Second Board Listing Requirements

Date	Name of Company	Reasons for Reprimand
2.2.99	Sateras Resources (Malaysia) Berhad	s.60 MBLR - failure to submit annual report within prescribed time.
2.2.99	Red Box (Malaysia) Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
2.2.99	Plantation & Development (Malaysia) Berhad	s.56 & s.60 MBLR – failure to submit half yearly report within prescribed time in the prescribed form; failure to submit annual report within prescribed time.
2.2.99	Mancon Berhad	s.335(4)(b)(viii) – failure to disclose its subsidiary’s issuance of Floating Rate Notes
3.2.99	Woventex Corporation Berhad	Clauses 3.15 and 5.5 – failure to disclose its subsidiary’s acquisition of ordinary shares and warrants; failed to issue circular to shareholders regarding the acquisition.
12.3.99	Magnum Corporation Berhad	s.36 and 114 MBLR – failure to disclose its acquisitions of shares and Loan Stocks. s.335(4)(b)(viii) –failure to disclose a term loan obtained by its subsidiary.
12.3.99	Westmont Industries Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
12.3.99	Promet Berhad	s.36 and 114 MBLR – failure to disclose its acquisitions of shares. s.115 MBLR – failure to issue a circular to shareholders regarding the shares acquisitions.
12.3.99	Zaitun Berhad	Clause 3.15 SBLR – failure to disclose acquisitions of shares. Clause 5.6 SBLR – failure to obtain shareholders’ approval for acquisitions of shares. Clause 5.8(1) SBLR – failure to issue circular to shareholders and seek their prior approval for shares acquired, which involved a director of Zaitun and constituted a related party transaction.
10.4.99	Rekapacific Berhad	s.57 MBLR - failure to submit preliminary financial statement within prescribed time in the prescribed form and failed to state whether results are audited or subject to audit.
10.4.99	Kelanamas Industries Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
10.4.99	Kuala Lumpur Industries Holdings Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
10.4.99	Malaysian General Investment Corporation Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
16.4.99	Repcos Holdings Berhad	Clause 5.4 SBLR –failure to disclose acquisitions and disposals of shares. Clause 5.6 SBLR – failure to obtain shareholders’

		approval for above acquisitions and disposals.
16.4.99	Rahman Hydraulic Tin Berhad	s.56 & s.60 MBLR – failure to submit half yearly report within prescribed time in the prescribed form; failed to submit annual report within prescribed time.
16.4.99	Perdana Industri Holdings Berhad	s.335(4)(b)(x) MBLR – failure to disclose certain significant litigation instituted against subsidiaries.
16.4.99	MBf Holdings Berhad	s.114 MBLR – failure to disclose its acquisition of shares.
16.4.99	Ekran Berhad	s.335(4)(b)(iv) MBLR – failure to disclose the lapse of a share sale agreement regarding a proposed disposal of its investments.
15.5.99	Promet Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
15.5.99	Aokam Perdana Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
15.5.99	SCK Group Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
21.5.99	MCL Corporation Berhad	s.335(4)(b)(i) MBLR – failure to disclose when its subsidiaries registered their interests to participate in 2 joint venture projects.
21.5.99	Faber Group Berhad	s.114 MBLR – failure to disclose when entered into an agreement in respect of disposals of:- i) its entire equity interest in a company and all its claims against the said company; and ii) all its rights and interests in a loan agreement.
21.5.99	Kuala Lumpur Industries Holdings Berhad	s.37(2) and s.114 MBLR – failure to disclose its disposal of of a company’s issued and paid up capital.
21.5.99	Eastern Oxygen Berhad	Clause 5.4 SBLR – failure to disclose a subscription and shareholders’ agreement between its subsidiary and another company.
19.6.99	Associated Kaolin Industries Berhad	Clauses 3.15 and 5.4 SBLR – failure to disclose its acquisition of shares .
19.6.99	Nanyang Press Holdings Berhad	s.114 MBLR – failure to disclose its acquisitions of shares.
19.6.99	Rekapacific Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
10.7.99	Rekapacific Berhad	s.56 MBLR – failure to submit half yearly report within prescribed time in prescribed form.
17.7.99	Hexagon Holdings Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
7.8.99	Ekran Berhad	s.114 MBLR – failure to disclose i) supplemental subscription agreements ii) additional supplemental subscription agreements s.35 and s.114 MBLR – failure to disclose acquisition of equity interest in companies
4.9.99	Pilecon Engineering Berhad	s. 335 MBLR – failure to disclose its shareholders’ decision.
16.10.99	Austral Amalgamated Berhad	s.36 and 114 MBLR – failure to disclose its acquisition of shares.
11.12.99	Pembinaan YCS Berhad	Clause 5.4 and 5.6 SBLR – failure to disclose its acquisitions and disposals of shares; failure to obtain

		approval in general meeting for the aforesaid transactions. s. 335(4)(b)(x) – failure to disclose 2 significant litigations against the Company.
11.12.99	Technology Resources Industries Berhad	s.114 MBLR – failure to disclose a withdrawal agreement between its subsidiary with two other companies.
11.12.99	Olympia Industries Berhad	s.335 MBLR – failure to disclose when its subsidiary receive the gaming licence renewal. s.341(1) and 341(3)(a) MBLR – failure to make a factual, clear, succinct, balanced and fair announcement on a court order obtained by its subsidiary.
11.12.99	Concrete Engineering Products Berhad	Clause 3.15 and 5.4 SBLR – failure to disclose its acquisitions of shares. Clause 5.5 SBLR – failure to issue circular to shareholders about its acquisitions of shares.
29.1.2000	Man Yau Holdings Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
29.1.2000	Penas Corporation Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
26.2.2000	Bright Packaging Industry Berhad	Clause 5.4 SBLR – failure to disclose an acquisition of shares. Clause 5.8(1) SBLR – failure to issue a circular to shareholders and to obtain prior approval in general meeting of the above acquisitions which involved the interests of past directors of the company.
11.3.2000	Repeco Holdings Berhad	Clause 3.21 SBLR – failure to submit preliminary financial statement within prescribed time in the prescribed form.
8.4.2000	Jasatera Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
29.4.2000	Kelanamas Industries Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
29.4.2000	Repeco Holdings Berhad	Clause 3.22 SBLR – failure to submit annual report within prescribed time.
6.5.2000	Austral Amalgamated Berhad	s.60 MBLR – failure to submit annual report within prescribed time.
6.5.2000	Pancaran Ikrab Berhad	s.335(4)(b)(i) MBLR read together with Clause 1.18 SBLR – failure to disclose a joint venture

SCHEDULE II

EXTANT ACCOUNTING STANDARDS ADOPTED BY MASB IN JANUARY 1998

<i>IAS 1</i>	<i>Disclosure of Accounting Policies</i>
<i>IAS 5</i>	<i>Information to be Disclosed in Financial Statements</i>
<i>IAS 7</i>	<i>Cash Flow Statements</i>
<i>IAS 9</i>	<i>Accounting for Research and Development Activities</i>
<i>IAS 10</i>	<i>Contingencies and Events Occurring After the Balance Sheet Date</i>
<i>IAS 11</i>	<i>Accounting for Construction Contracts</i>
<i>IAS 12</i>	<i>Accounting for Taxes on Income</i>
<i>IAS 13</i>	<i>Presentation of Current Assets and Current Liabilities</i>
<i>IAS 14</i>	<i>Reporting Financial Information by Segment</i>
<i>IAS 16</i>	<i>Property, Plant and Equipment (Revised*)</i>
<i>IAS 17</i>	<i>Accounting for Leases</i>
<i>IAS 18</i>	<i>Revenue Recognition</i>
<i>IAS 19</i>	<i>Accounting for Retirement Benefits in the Financial Statements of Employers</i>
<i>IAS 21</i>	<i>Accounting for the Effects of Changes in Foreign Exchange Rates</i>
<i>IAS 25</i>	<i>Accounting for Investments</i>
<i>IAS 26</i>	<i>Accounting and Reporting by Retirement Benefit Plans</i>
<i>IAS 27</i>	<i>Consolidated Financial Statements and Accounting for Investments in Subsidiaries</i>
<i>IAS 28</i>	<i>Accounting for Investments in Associates</i>
<i>IAS 31</i>	<i>Financial Reporting of Interests in Joint Ventures</i>
<i>MAS 1</i>	<i>Earnings per Share</i>
<i>MAS 3</i>	<i>Accounting for General Insurance Business</i>
<i>MAS 4</i>	<i>Accounting for Life Insurance Business</i>
<i>MAS 5</i>	<i>Accounting for Aquaculture</i>
<i>MAS 7</i>	<i>Accounting for Property Development Activities</i>

SCHEDULE III

EXTANT ACCOUNTING STANDARDS NOT ADOPTED BY MASB

<i>IAS 2</i>	<i>Inventories (Revised*)</i>
<i>IAS 4</i>	<i>Depreciation Accounting</i>
<i>IAS 8</i>	<i>Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies (Revised*)</i>
<i>IAS 23</i>	<i>Borrowing Costs (Revised*)</i>
<i>IAS 24</i>	<i>Related Party Disclosures</i>
<i>MAS 2</i>	<i>Accounting for Acquisitions and Mergers</i>
<i>MAS 6</i>	<i>Accounting for Goodwill</i>
<i>MAS 8</i>	<i>Accounting for Pre-Cropping Costs</i>

SCHEDULE IV

COMPLIANCE OF MASB STANDARDS WITH INTERNATIONAL ACCOUNTING STANDARDS

MASB Standard		Compliance with IASs
MASB 1	Presentation of financial statements	Consistent in all material aspects with IAS 1 (revised)
MASB 2	Inventories	Consistent in all material aspects with IAS 2 (revised) Exempt enterprises ⁶⁰ need not comply with certain provisions specified in the Standard
MASB 3	Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies	Consistent in all material aspects with IAS 3 (revised)
MASB 4	Research and Development Costs	Consistent in all material aspects with IAS 9(revised)
MASB 5	Cash Flow Statements	Consistent in all material aspects with IAS 7 (revised)
MASB 6	The Effect of Changes in Foreign Exchange Rates	Consistent in all material aspects with IAS 21 (revised) except for : 1) The MASB Standard permits a limited aspect of hedge accounting to be applied to trading transactions covered by forward exchange contracts, as well as foreign currency liabilities and other financial instruments which are designated as, and which provide an effective hedge of, net investments in foreign entities and foreign equity investments. 2) This Standard places extra conditions for the treatment of exchange differences in equity and their off-setting. The Standard also requires further disclosures of items relating to exchange differences included in the income statement. These exchange differences should be identified according to gains or losses realized in the period from currency transactions, and unrealised gains or losses from foreign exchange translations.
MASB 7	Construction Contracts	Consistent in all material aspects with IAS 11

⁶⁰ Definition of exempt enterprises as per MASB 2 :

An exempt enterprise is defined as an enterprise that :

- (a) does not have public accountability
- (b) at the balance sheet date, all of its owners are members of the enterprise's governing body;
and
- (c) is not large

SCHEDULE IV

COMPLIANCE OF MASB STANDARDS WITH INTERNATIONAL ACCOUNTING STANDARDS

MASB Standard		Compliance with IASs
MASB 8	Related Party Disclosures	<p>Compliance with the Standard will ensure conformity in all material respects with IAS 24, except in respect of the following :</p> <ol style="list-style-type: none">1) The MASB Standard applies only to financial statements of the following reporting enterprises :<ol style="list-style-type: none">(i) public listed companies; and(ii) subsidiaries of public listed companies2) Pension funds for the benefit of employees of reporting enterprises or enterprises that are related parties of the reporting enterprise are regarded as related parties under the MASB Standard.3) The Standard prescribes the close family members of shareholders, directors or officers of companies according to those defined in Section 122A of the Companies Act 1965.4) The Standard does not require related party disclosures in circumstances where to comply with such provisions would interfere with confidentiality protected by various laws.5) The Standard requires the disclosure of the identities of the related parties if there have been transaction between related parties.6) Instead of the disclosure of information on pricing policies as required by IAS 24, the Standard requires disclosure of the terms and conditions of each different type of transaction if the terms and conditions or prices are materially different from that obtainable in transaction with unrelated parties. Also, the Standard requires disclosure of amounts written off or forgiven in respect of debts due to or from related parties.

SCHEDULE IV

COMPLIANCE OF MASB STANDARDS WITH INTERNATIONAL ACCOUNTING STANDARDS

MASB Standard		Compliance with IASs
MASB 9	Revenue	Compliance with the Standard will ensure conformity in all material respects with IAS 18 (revised). Exempt enterprises ⁶¹ need not comply with certain provisions specified in the Standard.
MASB 10	Leases	Compliance with the Standard will ensure conformity in all material respect with IAS 17 (revised)

⁶¹ Definition of exempt enterprise as per MASB DSOP 3:

In arriving at a definition of exempt enterprises, this Statement of Principles employs surrogates to determine if an enterprise has dependent users, based on broad assumptions listed below :

- (i) More benefits are derived from the general purpose financial statements of enterprises with public accountability because such enterprises' financial statements are likely to have dependent users.
- (ii) There is generally no accountability requirement when all of the owners of an enterprise are also members of its governing body. However, where the owners and the governing body of an enterprise are different, an accountability requirement may arise, as there are likely to be dependent users. In this case, the value of the enterprise's general purpose financial statements to users may be expected to increase, and greater benefit is likely to be derived.
- (iii) Whilst the MASB does not believe that the path to providing exemptions should be based solely upon size, in general, the larger the enterprise, the more likely the existence of dependent users. This will usually result in a more extensive group of users benefiting from the information provided in the general purpose financial statements and, therefore, greater the benefits are likely to be derived.

SCHEDULE IV

COMPLIANCE OF MASB STANDARDS WITH INTERNATIONAL ACCOUNTING STANDARDS

	MASB Standard	Compliance with IASs
MASB 11	Consolidated Financial Statements and Investments in Subsidiaries	<p>Compliance with the Standard will ensure conformity in all material respects with IAS 27 (reformatted 1994) except for :</p> <ol style="list-style-type: none">1) In a parent's separate financial statements, IAS 27 requires that investments in subsidiaries that are included in the consolidated financial statements to be either accounted for using the equity method or carried at cost or revalued amounts. The MASB Standard prescribes only the method of cost or revalued amounts for investments in subsidiaries.2) IAS 27 exempts wholly owned parent or virtually wholly owned parent from the requirement to present consolidated financial statements. The MASB Standard exempts a wholly owned parent from presenting consolidated financial statements only if, a parent itself is a wholly owned subsidiary of another parent incorporated in Malaysia.3) In the case of companies incorporated under the Companies Act 1965, an investee-company shall be deemed as a subsidiary when a more than 50% ownership criterion is met. The MASB Standard, nevertheless, requires a rebuttal for the investee-company not to be consolidated on grounds of fair presentation when control does not exist.4) In addition, MASB 11 includes additional guidance and treatment for changes in stakes and changes in composition of a group.5) IAS 27 requires investment in subsidiaries excluded from consolidation (paragraphs 15 and 45), investment that ceases to fall within the definition of subsidiary (paragraph 32) and investments in subsidiaries that are included in the consolidated financial statements in the parent's separate financial statements (paragraph 44) to be accounted for in accordance with IAS 39, Financial Instruments : Recognition and Measurement. The MASB Standard currently requires those investments to be accounted for in accordance with MASB Approved Accounting Standard IAS 25, Accounting for Investments.

SCHEDULE IV

COMPLIANCE OF MASB STANDARDS WITH INTERNATIONAL ACCOUNTING STANDARDS

MASB Standard		Compliance with IASs
MASB 12	Investments in Associates	Compliance with this Standard will ensure conformity in all material respects with IAS 28 (revised 1998) except that in an investor's separate financial statements, IAS 28 requires that investments in associates should be either carried at cost or revalued amounts; or accounted for using the equity method; or accounted for as available-for-sale financial assets as described in IAS 39, Financial Instruments : Recognition and Measurement. The MASB Standard prescribes only the method of cost or revalued amounts for investments in associates.
MASB 13	Earnings Per Share	Compliance with this Standard will ensure conformity in all material respects with IAS 33 except that IAS 33 differs from the position adopted in this Standard by requiring earnings per share calculations to take account of changes in capital structure after the balance sheet date but before publication of the financial statements. The section of IAS 33 dealing with the calculation of diluted earnings per share has been expanded in this Standard to specifically exclude treasury shares held arising from share buybacks from the computation unless there has been a commitment for their resale.

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MASB STANDARDS WHICH FORM THE FRAMEWORK FOR FINANCIAL REPORTING

Forewords Issued by MASB

Foreword to MASB Standard

Foreword to Other MASB Technical Pronouncements

MASB Standards

MASB 1	<i>Presentation of Financial Statements</i>
MASB 2	<i>Inventories</i>
MASB 3	<i>Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies</i>
MASB 4	<i>Research and Development Costs</i>
MASB 5	<i>Cash Flow Statements</i>
MASB 6	<i>The Effect of Changes in Foreign Exchange Rates</i>
MASB 7	<i>Construction Contracts</i>
MASB 8	<i>Related Party Disclosures</i>
MASB 9	<i>Revenue</i>
MASB 10	<i>Leases</i>
MASB 11	<i>Consolidated Financial Statements and Investments in Subsidiaries</i>
MASB 12	<i>Investments in Associates</i>
MASB 13	<i>Earnings Per Share</i>

Accounting Standards Adopted by MASB

IAS 1	<i>Disclosure of Accounting Standards</i>
IAS 5	<i>Information to be Disclosed in Financial Statements</i>
IAS 7(revised)	<i>Cash Flow Statements</i>
IAS 9	<i>Accounting for Research and Development Activities</i>
IAS 10	<i>Contingencies and Events Occurring After the Balance Sheet Date</i>
IAS 11	<i>Accounting for Construction Contracts</i>
IAS 12	<i>Accounting for Taxes on Income</i>
IAS 13	<i>Presentation of Current Assets and Current Liabilities</i>
IAS 14	<i>Reporting Financial Information by Segment</i>
IAS 16(revised)	<i>Property, Plant and Equipment</i>
IAS 16(TP)	<i>Transitional Provision in respect of Assets Carried at Previously Revalued Amounts</i>
IAS 17	<i>Accounting for Leases</i>
IAS 18	<i>Revenue Recognition</i>
IAS 19	<i>Accounting for Retirement Benefits in the Financial Statements of Employers</i>
IAS 21	<i>Accounting for the Effect of Changes in Foreign Exchange Rates</i>
IAS 25	<i>Accounting for Investments</i>
IAS 26	<i>Accounting and Reporting by Retirement Benefit Plans</i>
IAS 27	<i>Consolidated Financial Statements and Accounting for Investments in Subsidiaries</i>
IAS 28	<i>Accounting for Investments in Associates</i>
IAS 31	<i>Financial Reporting of Interest in Joint Ventures</i>
MAS 1	<i>Earnings Per Share</i>
MAS 3	<i>Accounting for General Insurance Business</i>
MAS 4	<i>Accounting for Life Insurance Business</i>
MAS 5	<i>Accounting for Aquaculture</i>
MAS 7	<i>Accounting for Property Development Activities</i>
MAS 7(TP)	<i>Transitional Provision in respect of Assets Carried at Previously Revalued Amounts</i>

MASB Technical Releases

TR 1 (revised) *Share Buybacks – Accounting and Disclosures*
TR 2 *The Year 2000 Issue : Accounting and Disclosure*

SCHEDULE VI

MASB PRONOUNCEMENTS ISSUED FOR PUBLIC COMMENT

Exposure Drafts

ED 14 *Financial Reporting of Interest in Joint Ventures*
ED 15 *Depreciation Accounting*
ED16 *Property, Plant and Equipment*
ED 17 *General Insurance Business*
ED18 *Life Insurance Business*
ED 19 *Borrowing Costs*
ED20 *Events After the Balance Sheet Date*
ED21 *Provisions, Contingent Liabilities and Contingent Assets*
ED 22 *Segment Reporting*
ED 23 *Business Combinations*
ED 24 *Financial Instruments : Disclosure and Presentation*

Draft Statement of Principles

DSOP 1 *Business Combinations*
DSOP 2 *Accounting and Reporting by Unit Trusts*
DSOP 3 *Exempt Enterprises*
DSOP 4 *Interim Financial Reporting*
DSOP 5 *Income Taxes*

Discussion Paper

DP 1 *A Proposed Framework for the Preparation and Presentation of Financial Statements*

Appendix VII

International Standards of Auditing (ISA's) adopted in Malaysia

	ISA	IFAC issue date	MIA effect. date	MACPA effect. Date	ISA Ref.
Introductory Matters	Preface to International Standards and Statements on Auditing	1979	1987	1982	
	Framework of International Standards on Auditing and Related Services	1988	1991	1990	
	Glossary of Terms	1991	1992	1992	
Responsibilities	Objective and Scope of the Audit of Financial Statements	1980	1987	1982	ISA 1
	Audit Engagement Letters	1980	1987	1982	ISA 2
	Basic Principles Governing an Audit	1980	1987	1982	ISA 3
	Control of the Quality of Audit Work	1981	1987	1983	ISA 7
	Documentation	1982	1987	1983	ISA 9
	Fraud and Error	1982	1987	1983	ISA 11
Planning	Planning	1981	1987	1983	ISA 4
	Materiality and Audit Risk	1987	1990	1990	ISA 25
Internal Control	Study and Evaluation of the Accounting System and Related Internal Controls in Connection with an Audit	1981	1987	1983	ISA 6
	Auditing in an EDP Environment	1984	1987	1985	ISA 15
	The Effects of an EDP Environment on the Study and Evaluation of the Accounting System and Related Internal Controls	1985	1990	1989	ISA 20
Audit Evidence	Audit Evidence, with Addendum 1 on Additional Guidance on Observation of Inventory, Confirmation of Accounts Receivable and Inquiry Regarding Litigation and Claims	1990	1991	1991	ISA 8
	Analytical Procedures	1990	1993	1993	ISA 12
	Computer Assisted Audit Techniques	1984	1988	1989	ISA 16
	Related Parties	1984	1998	1996	ISA 17
	Audit Sampling	1985	1990	1989	ISA 19
	Representations by Management	1985	1990	1989	ISA 22
	Audit of Accounting Estimates	1987	1990	1990	ISA 26
	Inherent and Control Risk Assessments and Their Impact on Substantive Procedures	1990	1992	1992	ISA 29
Using Work of Others	Using the Work of an Other Auditor	1981	1987	1983	ISA 5
	Using the Work of an Internal Auditor	1982	1987	1983	ISA 10
	Using the Work of an Expert	1985	1988	1989	ISA 18
Audit Conclusions and Reporting	Date of the Auditors' Report; Events After Balance Sheet Date; Discovery of Facts After the Financial Statements Have Been Issued	1985	1990	1989	ISA 21
	Special Purpose Auditors' Report	1986	1991	1991	ISA 24

	ISA	IFAC issue date	MIA effect. date	MACPA effect. Date	ISA Ref.
Related Services	Basic Principles Governing Review Engagements	1988	1992	1992	ISA/R S 1
	Review of Financial Statements	1988	1992	1992	ISA/R S 2
	Engagements to Perform Agreed-upon Procedures	1990	1992	1992	ISA/R S 3
	Engagements to Compile Financial Information	1990	1992	1992	ISA/R S 4
International Statements on Auditing	These are Supplements to ISA 20				
	EDP Environments – Stand alone Micro Computers	1987	1989	1989	# 1
	EDP Environments – On-line Computer Systems	1989	1989	1989	# 2
	EDP Environments – Database Systems	1989	1989	1989	# 3
	Particular Considerations in the Audit of Small Businesses	1989	1991	1991	

Note: To enhance the status of the international auditing pronouncements, the International Auditing Practices Committee (IAPC) has designated IAGs as ISAs.

Appendix VIII

Auditing Statements Issued by MACPA and MIA

		MIA issue date	MACPA issue date	State- ment ref.
Malaysian Auditing Guidelines (MAG)	Auditor's Report: Forms and Qualifications	1990	1988	MAG 1
Auditing Technical Releases (ATR)	Audit Report Examples	1989	1988	ATR 1
	Standard Letter of Request for Information from Banks/ Finance Companies for Audit Purposes	1990	1990	ATR 2
	Accountants' Report for Prospectuses	1990	1989	ATR 3
	Reporting in Connection with Submission of Proposals to Capital Issues Committee	1990	1990	ATR 4